STANDARDS
FOR
LICENSED ASSISTED LIVING FACILITIES
22 VAC 40-72
Effective December 28, 2006

Technical Assistance

DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

TECHNICAL ASSISTANCE

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22 VAC 40-72-60 - Disclosure
Question: *Can disclosure information be incorporated in the resident contract?*
Answer: Standard 60 requires that the disclosure information be on a disclosure form developed by the Department. Some of the information on the disclosure form is the same or similar to information required on the resident agreement with the facility required by Standard 390. (There is a model form, which may or may not be used, for the resident agreement.) The correct information must be reflected on both forms; the wording can even be the same when it fits appropriately. However, the two forms serve different purposes and each must be completed totally. There cannot just be a reference from one to the other. (0102 – 5/07)

22 VAC 40-72-140 – Resident accounts
Question: *Do electronically recorded monthly statements and receipts have to go in the residents chart?*
Answer: No. 22 VAC 40-72-560 allows resident records to be kept electronically including monthly statements or itemized receipts. (0186 & 0189 – 5/07)

22 VAC 40-72-160 B – Personnel policies and procedures
Question: *Does the organizational chart that employees are required to receive pertain just to that staffing unit? (Example: Administrator-nurse-direct care staff or Owner-Board Members-Licensee-Administrator-nurse-direct care staff).*
Answer: The organizational chart refers to employees working at the facility, starting with the administrator and including all other identified positions. (0161 – 5/07)

22 VAC 40-72-160 D and E – Personnel policies and procedures
Question: *Are the completed evaluations to be given to the inspectors for review of content or just the date the review was completed? Aren't the evaluations and pay confidential information?*
Answer: The inspector does not need to review the content of the staff evaluation. The inspector is required to verify that the facility has developed and implemented procedures to annually evaluate staff performance. (0078 – 5/07)

22 VAC 40-72-170 A 5 – Staff general qualifications
Question: *Do staff, including administrators, who are hired prior to 07/01/92 need criminal record checks?*
Answer: An assisted living facility is not required to obtain background checks on employees, including administrators, hired prior to 07/01/92 who have been continuously employed, but may do so if the facility wishes. Background checks for employees of ALFs include a criminal history record check and a sworn disclosure statement. In 1993, in the Code of Virginia, the words "On or after July 1, 1992" were struck from the requirement that an ALF (then known as a home for adults) shall not hire for compensated employment persons who have been convicted of specified barrier crimes. The reason that employees hired prior to 07/01/92 do not need to have background checks is that hiring is a one time event, not a continuous state. Therefore, employees who were already hired prior to 07/01/92 and have continuous employment at the ALF are not included in the population needing a background check. Supporting this is another requirement in the Code specifying that the ALF shall obtain the criminal history record (or clearance) "within 30 days of employment." This requirement also indicates the one time nature

of the mandate. Please note that the answer to this question applies to § 63.2-1720 (formerly § 63.1-173.2) of the Code, which relates to employees. It does not apply to § 63.2-1721, which relates to applicants for licensure. (0105 – 5/07)

22 VAC 40-72-190 D – Administrator provisions and responsibilities
Question: *Is a written plan required that explains how the administrator directs operations?*
Answer: This standard does not require a written plan for how the administrator directs operations. (0008 – 5/07)

22 VAC 40-72-200 D and E – Administrator qualifications
Question: *Is the Assisted Living Federation of America (ALFA) considered a department-approved course? Virginia has an ALFA affiliate, which is VAALFA.*
Answer: The ALFA course provides an insufficient amount of training to satisfy the requirements. (0107 – 5/07)

Question: *Do the new ALF standards allow for assistant administrators to be "grandfathered" as well?*
Answer: The new ALF standards provide for the following:
In facilities licensed for residential living care only, an assistant administrator is "grandfathered" if:

1) he was employed as an ALF assistant administrator prior to 12/28/06;
2) when he was employed, he met the qualifications in effect at that time for an ALF administrator; and
3) he has been continuously employed as an ALF assistant administrator.

In facilities licensed for both residential and assisted living care, an assistant administrator is "grandfathered" if:

1) he was employed as an ALF assistant administrator prior to 12/28/06;
2) when he was employed, he met the qualifications in effect at that time for an ALF administrator; and
3) he has been continuously employed as an ALF assistant administrator.

NOTE: An assistant administrator employed prior to 2/1/96, who met the exception to the 2/1/96 standards, must successfully complete a department-approved course specific to the administration of an ALF by 12/28/07. (0139 - 5/07)

Question: *Is there a department-approved course specific to the administration of an ALF available?*
Answer: Yes, currently one course specific to the administration of an ALF has been approved by the department. Please note that when administrators of ALFs licensed for both residential and assisted living care have to become licensed, they will be subject to the regulations of the Board of Long-Term Care Administrators, Virginia Department of Health Professions. Any training required to become a licensed administrator will be overseen by the Department of Health Professions, Board of Long-Term Care Administrators. (0099 – 5/07)

Question: *Will administrators who were "grandfathered" in with the 2/96 regulations be "grandfathered" in to meet the new ALF standard requirements?*

Answer: Administrators of facilities licensed for residential living care only who were "grandfathered" in with the 2/96 regulations and who meet the requirement for continuous employment as an ALF administrator are "grandfathered" in. Administrators of facilities licensed for both residential and assisted living care who were "grandfathered" in with the 2/96 regulations are "grandfathered" in provided they meet the requirement for continuous employment as an ALF administrator and complete a department-approved course specific to the administration of an ALF by 12/28/07. (0095 – 5/07)

22 VAC 40-72-200 E – Administrator qualifications

Question: *Will the administrators that are currently LPNs who met the requirements to be an administrator in the previous regulations need to take the administrator's class to meet the new requirements, since the exception only addresses RNs as being qualified to be the administrator in ALFs?*

Answer: Administrators who are currently LPNs no longer meet the exception regarding nurses, since now it only applies to RNs. Even though that exception does not apply to the LPNs who are administrators, it is likely that most or all of them would meet another exception, i.e., the exception for administrators employed prior to 12/28/06 who met the requirements in effect when employed and who are continuously employed. If they meet that exception, they would not have to take the administrator's class. How these administrators will be affected by the administrator licensure requirements depends upon the regulations of the Board of Long-Term Care Administrators. (0096 – 5/07)

22 VAC 40-72-200 E and F – Administrator qualifications

Question: *Will current administrators (after 1996) of ALFs licensed for both residential and assisted living care continue to be grandfathered after the Department of Health Professions takes over? Since LPN education does not allow a person to qualify as an administrator in the new ALF regulations, does an LPN's credit hours towards the LPN education count towards the 30 hours needed?*

Answer: In response to the first question, whether or not current administrators (after 1996) of ALFs licensed for both residential and assisted living care will continue to be grandfathered depends upon the requirements of the regulations of the Board of Long-Term Care Administrators, Virginia Department of Health Professions. The second question relates to the new assisted living facility standards. Whether an LPN's credit hours count toward the 30 hours would depend on the subject matter of the credit hours and where the credit hours were obtained. The standard specifies that the 30 credit hours be comprised of courses in human services or group care administration from an accredited college or university. Any part of the LPN's education that meets these requirements would count toward the 30 hours. (0108 – 5/07)

Question: *Are administrators hired prior to 12/28/06 who have been continuously employed required to become licensed after the provisions of subsection E expire?*

Answer: Yes. All administrators of ALFs licensed for both assisted and residential living care will be required to become licensed. Administrators of ALFs licensed for residential living care only will not be required to become licensed. (0085 - 5/07)

22 VAC 40-72-200 F – Administrator qualifications

Question: *Does this mean that in residential living care only facilities administrators do not have to be licensed?*
Answer: Yes, it does mean that administrators of facilities licensed for residential care only do not need to be licensed. (0016 – 5/07)

Question: *Do you have any additional information at this time regarding the ALF administrator license? What will be entailed in obtaining the license, e.g., courses, exams, etc.?*
Answer: The regulations for the ALF administrator license are promulgated by the Board of Long-Term Care Administrators, Virginia Department of Health Professions. The proposed text of the regulations may be found on the Virginia Regulatory Town Hall web site, http://www.townhall.virginia.gov. As this was written, the regulations for licensure of the ALF administrator were not yet final. Please check the Town Hall web site for current status. (0122 – 5/07)

Question: *Will a licensed nursing home administrator still be qualified to be the administrator of an assisted living facility (ALF) once the regulations for licensure of ALF administrators take effect?*
Answer: Yes, a licensed nursing home administrator will still be qualified to be the administrator of an ALF once the regulations for licensure of ALF administrators take effect. The Code of Virginia (§ 63.2-1803) states that a licensed nursing home administrator is qualified to be the administrator of an ALF. (0034 – 5/07)

Question: *Is there going to be a curriculum available to current administrators for the exam required to become a Licensed Assisted Living Facility Administrator? If so, when, and who will administer the curriculum?*
Answer: The requirements for licensed assisted living facility administrators are the responsibility of the Board of Long-Term Care Administrators, Department of Health Professions. They will be determining appropriate curriculum, including the availability of such, for those persons seeking to become licensed ALF administrators. You may access their website at www.dhp.virginia.gov. (0046 – 5/07)

Question: *Will a LPN or a RN still have to become licensed in order to be an ALF administrator?*
Answer: All administrators of ALFs licensed for both assisted and residential living care are required to become licensed, including those who are LPNs or RNs. Administrators of ALFs licensed for residential living care only are not required to become licensed. (0088 – 5/07)

Question: *If an administrator has gone through the 125 hours of training approved by DSS would they have to be licensed and what would this training enable them to do in becoming an administrator?*
Answer: All administrators of ALFs licensed for both assisted and residential living care will have to be licensed. Administrators of ALFs licensed for residential only do not have to be licensed. Regarding the training, the answer to this question depends upon the requirements of the regulations promulgated by the Board of Long-Term Care Administrators within the Virginia Department of Health Professions. (0193 – 5/07)

Question: *Which administrators have to become licensed?*
Answer: All administrators of ALFs licensed for both assisted and residential living care will have to be licensed. Administrators of ALFs licensed for residential only do not have to be licensed. (0089 – 5/07)

22 VAC 40-72-210 – Administrator training
Question: *Regarding administrator training, will the number of trainings be increased in order to meet the new requirements for all staff involved?*
Answer: Administrators and other staff can continue to meet training requirements through department sponsored events, in-service trainings, and independently offered trainings. (0035 – 5/07)

22 VAC 40-72-210 A – Administrator training
Question: *If a current employee is promoted to administrator, which date of hire is used to calculate the 12 month training cycle-the original hire date or the promotion date?*
Answer: The date an employee becomes the administrator would be used to calculate the 12 month training cycle as this standard requires training specific to an administrator. (0007 – 5 /07)

22 VAC 40-72-220 – Shared administrator for smaller facilities
Question: *Regarding a shared administrator for smaller facilities, can one of the two facilities be a non-medical hospital and the other an ALF?*
Answer: No, one of the two cannot be a non-medical hospital. The facilities to which the standard refers and applies are assisted living facilities only. (0126 – 5/07)

22 VAC 40-72-260 A – Direct care staff training
Question: *The wording on this standard ("in addition to required first aid and CPR training") sounds like all direct care staff are required to have first aid and CPR training, however, Standard 300 states that all direct care staff must have first aid but not CPR. Can you clarify?*
Answer: 22 VAC 40-72-260 A (facilities licensed for residential living care only) and 22 VAC 40-72-260 B (facilities licensed for residential and assisted living care) refer to the training hours required for direct care staff and clarifies through the language "(in addition to required first aid and CPR training)" that any first aid and CPR training that may be required of the direct care staff under 22 VAC 40-72-300 would not count toward the training hours required in 22 VAC 40-72-260. (0056 & 0063 – 5/07)

22 VAC 40-72-280 G – Volunteers
Question: *Why is it required to have a staff directly present when a volunteer is doing a program and residents are present? This would reduce the offering of free programs. Why have a volunteer call bingo if we have to have a staff present?*
Answer: Standard 280 G requires that a volunteer be directly supervised by a staff person when residents are present. This requirement provides protection for the safety and welfare of the residents, the volunteer, and the facility because of several factors that are often the case in respect to the use of volunteers. In general, volunteers do not know the residents as well as those regularly filling staff positions, and therefore may inadvertently run into difficulty with certain residents and then not be able to adequately resolve matters. Also, residents may not be as comfortable with a volunteer whom they don't know. Moreover, there may not be the

consistency of qualifications for volunteers as is found for paid staff. In addition, it may be problematic if a facility comes to rely on volunteers, who may not have the same commitment to work as a paid employee. These concerns can be avoided or alleviated by requiring a staff person to be present. (0094 – 5/07)

22 VAC 40-72-290 C 6 – Staff records and health requirements
Question: *What is the "organizational chart"? Do you have to give it to each new employee and can this be done during Orientation?*
Answer: An organizational chart is a graphic representation of the structural relationships within and among all components of an organization, including the lines of authority and areas of responsibility for individuals or categories of positions. Standard 290 C 6 specifies that the staff person's record contain verification that he received a copy of the organizational chart (and also his job description). Standard 160 B requires that each staff person be given a copy of the facility's current organizational chart (and also his current job description). Each new employee must receive the organizational chart and job description, both of which are to be given to them prior to or during orientation. Moreover, if the organizational chart or job description changes, the employee must be given a copy of the revised document(s) so he always has the current version. (0071 – 5/07)

22 VAC 40-72-290 C 9 – Staff records and health requirements
Question: *Since the date 07/01/92 is removed, does that mean that the facility has to have background checks on employees hired PRIOR to that date?*
Answer: An assisted living facility is not required to obtain background checks on employees hired prior to 07/01/92 who have been continuously employed, but may do so if the facility wishes. In 1993, in the Code of Virginia, the words "On or after July 1, 1992" were struck from the requirement that an ALF (then known as a home for adults) shall not hire for compensated employment persons who have been convicted of specified barrier crimes. The reason that employees hired prior to 07/01/92 do not need to have background checks is that hiring is a one time event, not a continuous state. Therefore, employees who were already hired prior to 07/01/92 and have continuous employment at the ALF are not included in the population needing a background check. Supporting this is another requirement in the Code that specifies that the ALF shall obtain the criminal history record (or clearance) "within 30 days of employment." This requirement also indicates the one time nature of the mandate. Please note that the answer to this question applies to § 63.2-1720 (formerly § 63.1-173.2) of the Code, which relates to employees. It does not apply to § 63.2-1721, which relates to applicants for licensure. (0104 – 5/07)

22 VAC 40-72-290 D – Staff records and health requirements
Question: *Does the reference to household members in this standard mean those related or otherwise connected to staff or those related or otherwise connected to residents?*
Answer: Household member is defined in Standard 10 as any person domiciled in an assisted living facility other than residents or staff. As such, the definition applies to household members related or otherwise connected to either staff or residents. (0110 – 5/07)

Question: *Can a risk assessment for TB be completed by a licensed nurse of the facility without oversight by a physician? (Not the PPD test, but just the screening risk assessment)*

Answer: No. Whether screening or testing, there must be a qualified health professional (MD, DO, Nurse Practitioner, Physician's Assistant) willing and able to assume responsibility for assisting with the development of the facility's protocols and ultimately for the final decision related to outcome of any screening or testing. (0133 – 5/07)

22 VAC 40-72-320 – Staffing
Question: *Who will be gathering the information to complete the new tool(s) designed to help determine numbers and types of staff required to meet the identified needs of the residents?*
Answer: The tools will be utilized by licensing inspectors to record information which should already be available in a variety of forms in the facility, including assessments of residents' needs, individualized service plans, current staffing schedules, staff qualifications and the facility's written staffing plan. If the facility does not have specific information on file, the inspectors may enlist staff assistance in collecting necessary data. Inspectors will also interview facility staff, residents and family members as a part of the process of determining whether the facility has staff sufficient in numbers and qualifications to provide the services to appropriately meet the needs of the residents. (0141 – 5/07)

22 VAC 40-72-320 E – Staffing
Question: *Can the facility scratch through the name of the assigned person(s) and write in the name of the individual(s) who actually worked that shift?*
Answer: The standard requires that absences and substitutions be indicated on the written work schedules. A single line through the name of the scheduled staff with the addition of the name of the substitute is the appropriate method to indicate these changes. Best practice would be for the individual making such a change to initial and date the change. (0092 – 5/07)

22 VAC 40-72-340 B 3 – Admission and retention of residents
Question: *Are there specific guidelines on this interview? What should be covered? How in depth? 5 minute discussion vs. 45 minute? Specific topics to review/discuss with prospective residents?*
Answer: The interview is one of the tools to be used by a facility to determine whether or not it can meet the needs of a prospective resident. The facility is to decide on the topics to be covered in the interview based on what is important to know to make a decision regarding whether it has the appropriate services/care provisions to protect the health, safety and welfare of the individual. The length of time necessary to make this determination may vary from person to person. Of course, the ALF may also use the interview to provide an opportunity for the prospective resident to ask questions about the facility, but this is not required by the standard. (0070 – 5/07)

22 VAC 40-72-350 A 7 – Physical examination and report
Question: *Is "diet as tolerated" allowed in ALFs? Can this be accepted as the type of diet from the physician?*
Answer: This is acceptable; however, the more accurate order would be "Regular Diet as tolerated." Unless otherwise stipulated, "diet as tolerated" implies that the resident will receive a healthy, well-balanced diet that is appropriate for his/her age and activity levels and takes into consideration his/her likes and dislikes. (0064 – 5/07)

22 VAC 40-72-350 A 8 – Physical examination and report
Question: *Who can sign off on the risk assessments (screenings) for tuberculosis?*
Answer: Only a representative from the Department of Health or the examining physician or his designee can sign the results of the risk screening. If a physician has worked with a facility to develop screening/testing protocols and is willing/able to assume responsibility for direction and oversight of the licensed nurse(s) working in the facility, the physician may identify those nurses as his/her designee in the facility. (0147 – 5/07)

22 VAC 40-72-350 C 1 – Physical examination and report
Question: *Does each resident need to have an annual risk assessment (screening) by a physician?*
Answer: The standard requires that each resident have an annual risk assessment for tuberculosis. Only a representative from the Department of Health or the examining physician or his designee can sign the results of the risk screening. If a physician has worked with a facility to develop screening/testing protocols and is willing/able to assume responsibility for direction and oversight of the licensed nurse(s) working in the facility, the physician may identify those nurses as his/her designee in the facility. (0195 – 5/07)

22 VAC 40-72-350 D – Physical examination and report
Question: *As necessary to determine whether a resident's needs can continue to be met in the ALF, the department may request a current physical examination, including diagnosis and assessments. Can a provider request this evaluation/assessment through the department to be completed before a resident is considered ready to return from a hospital stay? Can a provider decline to accept a resident back into care without a satisfactory evaluation?*
Answer: The department does not arrange for or coordinate to have assessments conducted to determine whether a resident's needs can continue to be met in an ALF. If a facility has determined that it can no longer meet the needs of a resident, the facility must initiate discharge planning in accordance with 22 VAC 40-72-420. The department shall review specifically 420 H, *Discharge Statement*, to ensure that the facility conscientiously considered all relevant information before arriving at the decision to discharge. (0010 – 5/07)

22 VAC 40-72-360 – Mental health screening
Question: *What if you think a resident needs a mental health screening but the resident's primary care physician doesn't agree and says he can handle it? Assuming he does so successfully, would we be cited for not having the resident seen by a mental health professional?*
Answer: A primary care physician's medical license authorizes him or her to assess and treat mental diseases, i.e., treatment of mental diseases does not require licensure as, for example, a psychiatrist, clinical psychologist/social worker or other specialist acting within the scope of that license. If the facility is satisfied that the primary care physician's treatment is effectively addressing the resident's symptoms in a way that abates risks to self/others, as this question states, there would be no reason to cite the facility because it has met the intent of the standard. On the other hand, if the facility remains concerned, it should promptly contact the primary care physician about its observations and concerns, which might prompt the physician to make a referral or to change the resident's treatment regimen. If the facility is not satisfied that the resident's treatment is abating risks to self/others, it has the responsibility to seek a second opinion, presumably with a qualified assessor or psychiatric specialist. A clear failure to monitor

and deal with a situation of this type in a timely and responsible manner would be cited as a violation. The ALF licensee remains ultimately responsible for determining whether the facility can adequately and safely serve each resident and for maintaining a safe environment for all residents and personnel. (0120 – 5/07)

Question: *Are specific content items and format required for the mental health screening? Standard 360 E, states that if mental health services are recommended by the screening, the facility must notify the community services board, behavioral health authority, or other appropriate licensed provider. Please clarify who these agencies and providers are.*
Answer: The department does not require that a specific format be used by the Qualified Mental Health Professional (QMHP) to prepare the mental health screening report. The format of the areas covered in a mental health screening is determined by the standards as practiced by the QMHP's profession. Generally, a mental health screening will provide information about, e.g., the recent history and current status of a person's mental, emotional, and behavioral functioning; complaints or concerns identified by the person being examined and/or by the referring party; and concluding statements by the QMHP regarding whether the person may present concerns for the safety of himself and/or others, and interventions recommended to address whatever concerns were identified. Community services boards (CSBs) and behavioral health authorities (BHAs) are community-based mental health clinics that are required by law to offer services to the public, at a cost based on income, in the areas of mental illness, mental retardation, substance abuse, and behavioral disorders. Other appropriate licensed professionals who could provide mental health services in their privately owned businesses are, for examples, psychiatrists, psychologists, social workers, psychiatric nurse practitioners, etc. (0129 – 5/07)

Question: *Will VDSS provide a model form for the mental health screening used to determine the need for a referral to a qualified mental health professional?*
Answer: The department will not develop a form for the mental health screening used to determine the need for a referral to a qualified mental health professional. Instead, the department supports using the *Psychosocial Assessment, Part IV,* and the *Appendix K* of the *Uniform Assessment Instrument* (UAI) for this purpose. While the facility is free to use its own screening tool for private-pay residents, the department does recommend that the information provided by any optional tool address, at a minimum, the areas covered by the *Psychosocial Assessment, Part IV* of the UAI. (0173 – 5/07)

Question: *What information is to be on the mental health screening?*
Answer: The information provided by the *Psychosocial Assessment, Part 4* and the *Appendix K* of the *Uniform Assessment Instrument* is required to be used for public-pay residents to determine whether a referral needs to be made to a qualified mental health professional. For private-pay residents, while the facility is free to use its own preliminary screening tool, it is recommended that the information provided by the tool be similar to the information provided by the *Psychosocial Assessment* of the UAI for public-pay residents. Regarding the information contained in the mental health screening instrument prepared by the qualified mental health professional, the areas covered in this screening will be consistent with the standards of his professional practice. (0069 – 5/07)

Question: *Is there a particular DSS form to be used for the mental health screening? Is this the same as the Assessment of Serious Cognitive Impairment?*
Answer: DSS does not have a model form for the mental health screening. To determine the need for a referral to a qualified mental health professional, the facility may (1) use its own mental health screening tool or complete the *Psychosocial Assessment* section and the Appendix K of the UAI for private-pay residents, (2) request a person who is eligible to complete the *Psychosocial Assessment* section and the Appendix K of the UAI for public-pay residents, or (3) rely on an assessment by another health care professional. The mental health screening that is conducted by the qualified mental health professional will utilize the format in accordance with the standards of his professional practice. This screening is not the same as the assessment to determine serious cognitive impairments for persons diagnosed with dementia. (0047 – 5/07)

Question: *Will the latest psychological evaluation be enough for a mental health screening?*
Answer: As it relates to the appropriateness of a prospective admission, the purpose of a psychological evaluation or screening is to address concerns raised by a facility, an assessor using the uniform assessment instrument, or other health care professional who observes (within the six months prior to the date of being considered for admission into an assisted living facility) behaviors or patterns of behaviors that might be indicative of mental illness, mental retardation, substance abuse, or behavioral disorders. Therefore, if the "latest psychological evaluation" does not address the concerns regarding the appropriateness of the admission of a prospective resident and/or it was performed prior to the six month time period, then it would not meet the intent of Standard 360. (0055 – 5/07)

Question: *Would a resident who is a wanderer or who talks to himself need a mental health screening?*
Answer: The question that must be asked is whether the observed behaviors or patterns of behaviors are believed to place the resident or others at risk for harm. Not all behaviors or patterns of behaviors warrant mental health intervention, especially if there are no apparent indications that the display is a threat to the safety of the resident or others, or if the professional health care provider who is overseeing the mental health care of the resident is already aware that the behaviors are occurring. Instead, it may be appropriate to seek medical attention in order to rule out a medical cause. Precaution, nevertheless, should be taken when a resident is exhibiting behaviors seen for the first time or considered "out of character" for that particular resident. In this case, if wandering or talking to oneself is a behavior that is considered "out of character" for a resident or is a behavior that the professional health care provider is not aware of, then it would be proper to seek professional intervention. (0121 – 5/07)

Question: *If a resident is admitted to an ALF prior to getting the results of a mental health screening from a qualified mental health professional, and it is subsequently revealed from the screening that the resident is assessed as a risk to self and/or others, can you then discharge the resident based on being unable to meet their needs?*
Answer: Yes. However, the facility must explain specifically why it is not able to meet the needs of the resident. Simply stating, "The facility is unable to meet the needs of the residents," is not a reason…it is a conclusion. The facility must state the reasons, conditions, or circumstances that prevent it from being able to provide the scope of services required by the resident. If the resident presents a high risk to self and/or others, the facility must be able to

provide sufficient information about the behavior(s) and existing circumstances to clearly demonstrate the basis for which a discharge decision was made. For instance, if the resident is prone to self-injurious behaviors, the facility may state that its staff is not adequate in number to provide intense supervision nor do they have adequate training specific to being able to therapeutically intervene when such behaviors occur. (0150 – 5/07)

Question: *If a prospective resident needs a mental health screening, will VDSS pay to have it done? If so, who should be contacted to arrange this?*
Answer: The department neither arranges nor pays for the mental health screening required by Standard 360 and §63.2-1805.b of the Code of Virginia. For public-pay residents, the initial screening that is conducted to determine the need for a referral to a qualified mental health professional (QMHP) must be performed by a qualified assessor (an employee of a public human services agency trained in the completion of the Uniform Assessment Instrument). There is no charge to the resident or facility for this screening. If a referral to a QMHP for a screening is indicated for a public-pay resident, the screening performed by the local CSB, behavioral health authority, or a Medicaid-approved provider will be paid for by Medicaid. For private-pay residents, the initial screening to determine the need for a referral to a QMHP may be performed by a qualified assessor (staff member of the facility trained in the completion of the Uniform Assessment Instrument) or an independent private physician selected by the facility or the resident. If a referral for a screening by a QMHP is indicated for a private-pay resident, the facility or resident may use any independent private QMHP. The cost for the screening is assumed by the resident or his health care plan. (0152 – 5/07)

22 VAC 40-72-360 A – Mental health screening
Question: *What is the intent of Standard 360 A?*
Answer: Because ALFs are not designed to be able to provide the same level of care that a mental health facility can provide, assurance is needed that any prospective resident or one already residing in an ALF, with a recent history of a mental, emotional, substance abuse, or a behavioral disorder, can safely reside in the facility. It is not intended that all individuals with a recent history of these problems be subject to an assessment by a qualified mental health professional. Rather, it is intended that professional intervention be pursued when there are observations about the person that lead one to have concern for the safety of that person and/or others. (0175 – 5/07)

22 VAC 40-72-360 B – Mental health screening
Question: *If a resident had to be hospitalized due to dangerous behavior and is expected to return to the ALF, will the discharging psychiatric hospital conduct a mental health screening or would the facility need to request it?*
Answer: A written assessment of a resident's functioning and appropriate diagnosis is a standard practice for a hospital. Additionally, a discharge summary is typically prepared which, in part, describes the identified problem(s), services provided, status of the problem(s) at discharge, and any recommended aftercare services. The assessment and discharge summary should provide sufficient information in order for the ALF to determine whether the needs of the resident, at the time of discharge from the hospital, exceed the abilities of the ALF to care for the resident. However, the availability of the written assessment and summary at the time the resident is deemed ready to return to the ALF could be delayed. If this is the case, then the facility is

advised to obtain and document as much information as possible verbally from the mental health provider (or designee) involved in treating the resident in the hospital. (0032 – 5/07)

22 VAC 40-72-360 C – Mental health screening
Question: *Can we use the geropsychiatrist that we contract with under 40-72-500 to provide services to our residents to complete the mental health screenings under 40-72-360?*
Answer: For the purpose of admission, the screening that is conducted to determine only the need for a referral to a qualified mental health professional may be performed by a geropsychiatrist or other qualified health care provider who has a contract with the facility for services specified in 500. However, in accordance with Standard 360 C, when a person has a direct or indirect financial interest in the facility or who is an owner, officer, employee, or is an independent contractor with the facility, this person cannot be the one who will actually conduct the mental health screening to meet the requirements of 360 A, B, and E. Standard 360 C is consistent with the definition of "financial interest" and "investment interest" and the intent of avoiding a conflict of interest as conveyed by that section under § 37.2-809. (0127 – 5/07)

22 VAC 40-72-360 E 1 and 2 – Mental health screening
Question: *Can the required notifications regarding the resident's need for mental health, mental retardation, substance abuse, or behavioral disorder services be verbal or must they be written down in the chart?*
Answer: The required notifications that the resident has been assessed as needing services may be given verbally and/or may be sent in writing. Either method of notification must be documented in the resident's file to reflect the name and affiliation of the person contacted, date and time of contact, and a brief statement of the information shared with the person(s) contacted. (0151 – 5/07)

22 VAC 40-72-360 and 365 – Mental health screening
Question: *Would there be a conflict of interest with a local CSB or behavioral health authority in conducting the mental health screening or providing the psychosocial and behavioral history for a resident who resides in an ALF it operates?*
Answer: The department does not consider any public agency (federal, state, or local) to be subject to the conflict of interest requirement as stated at 360 C. (0060 – 5/07)

Question: *Do Standards 360 and 365 apply to residents with dementia?*
Answer: Having a diagnosis of dementia, alone, would not necessarily require attention under the standards related to mental health services, coordination, and support. What determines the need is whether the behaviors of the person with dementia place himself or others at risk for harm, e.g., exhibiting a problem with aggression or depression. The behavior of wandering is not one that would typically warrant mental health interventions. However, if any behavior is observed, even wandering, that is considered not normal for a particular person, then it would be appropriate to seek a professional opinion. In fact, it may be necessary to seek professional help in order to rule out a medical cause for the behavior. (0041 – 5/07)

22 VAC 40-72-360 and 500 – Mental health screening

Question: *If an ALF is associated with a hospital that has mental health professionals, e.g., M.D., case managers, CSW, etc., can they be used to provide mental health services to residents in the ALF?*
Answer: The question does not specify the way in which the "ALF is associated with a hospital" or the specific mental health services needed by the ALF, and the answers would depend on those factors.
If the ALF has no financial ties to the hospital:

- The ALF may make a referral to a mental health professional employed by the hospital to complete the initial mental health screening as required by 360 C., and, to provide other mental health services, except for evaluations for involuntary commitments, which are restricted by law to community services boards and behavioral health authorities.

If the ALF has a financial relationship with the hospital, the ALF:

- May use a hospital employee to perform only the initial screening, which is conducted to determine whether a referral needs to be made for a formal mental health screening by a qualified mental health professional. That is, only a provider with no financial relationship with the ALF can perform the formal mental health screening.
- May use the hospital's mental health professionals to provide emergency and non-*emergency* mental health care and treatment, unless
    - an evaluation is for purposes of obtaining an involuntary psychiatric admission, in which case the CSB or behavioral health authority must perform the evaluation, or,
    - another regulation or law applicable to licensed ALFs requires that the evaluator be independent of the facility in which the resident resides, e.g., an evaluator who conducts an assessment to admit a resident to a safe, secure environment (or special care unit) must be independent of the ALF. (0142 – 5/07)

22 VAC 40-72-365 – Psychosocial and behavioral history
Question: *Regarding the psychosocial and behavioral history, how are you going to cite on something that is so totally subjective? Is there no model form? Are we to have mental health services for every resident with dementia?*
Answer: The requirement is to determine compliance on whether the facility has obtained and has used the information in a psychosocial and behavioral history in considering the appropriateness of admission and in developing the individualized service plan. It is not expected that a determination regarding the quality of the content be made. Part II of the ***Mental Health Screening Determination Form*** is being made available to ALFs in order to document their efforts to comply with Standard 365. Whether a resident with dementia should receive mental health services is a determination that can only be made by a clinician trained in diagnosing and treating mental and behavioral disorders. A clinician should be involved in any case where the behavior so warrants. If a recommendation has been made by a qualified mental health professional that a person with dementia may benefit from some form of psycho-pharmacological and/or behavioral treatment, then it would be expected that the effort be made to secure these services. (0168 – 5/07)

22 VAC 40-72-365 and 360 – Psychosocial and behavioral history

Question: *Would there be a conflict of interest with a local CSB or behavioral health authority in conducting the mental health screening or providing the psychosocial and behavioral history for a resident who resides in an ALF it operates?*
Answer: The department does not consider any public agency (federal, state, or local) to be subject to the conflict of interest requirement as stated at 360.C. (0060 – 5/07)

Question: *Do Standards 365 and 360 apply to residents with dementia?*
Answer: Having a diagnosis of dementia, alone, would not necessarily require attention under the standards related to mental health services, coordination, and support. What determines the need is whether the behaviors of the person with dementia place himself or others at risk for harm, e.g., exhibiting a problem with aggression or depression. The behavior of wandering is not one that would typically warrant mental health interventions. However, if any behavior is observed, even wandering, that is considered not normal for a particular person, then it would be appropriate to seek a professional opinion. In fact, it may be necessary to seek professional help in order to rule out a medical cause for the behavior. (0041 – 5/07)

22 VAC 40-72-410 – Acceptance back in facility
Question: *Please clarify the provider's responsibility to accept a resident back into the facility when he is sent out by an emergency custody order (ECO) or temporary detention order (TDO) but the resident is not committed.*
Answer: If a resident is not involuntarily committed to an in-patient treatment facility, pursuant to §37.2-808 (ECO) and §37.2-809 (TDO) of the Code of Virginia, then the facility must have procedures in place to accept the resident back in the facility. The resident must also be accepted back in the facility if the facility has a policy that permits the holding of a resident's bed if the resident is away from the facility on a temporary transfer. A facility still has the responsibility under Standard 420, however, to initiate discharge procedures if it concludes that a resident's needs exceed its ability to safely and adequately care for him. In making that decision, the facility should carefully weigh its own capabilities against the care demands reflected in the totality of relevant circumstances surrounding that individual's residency, including but not limited to symptoms, response to emergency or non-emergency treatment, and availability of supplemental resources. (0030 – 5/07)

22 VAC 40-72-440 A and I – Individualized service plans
Question: *What if a family or legal representative does not participate in ISP plan or review?*
Answer: Standards 440 A and I require that the resident's family and legal representative be involved in the development and review of the ISP "as appropriate." This means that if the facility's attempts to involve these individuals at each development/review stage prove to be unsuccessful, then it is not required that the family or legal representative be involved in the ISP development/review. The ALF is to make reasonable attempts to contact these persons at each development/review stage, and even if they cannot be physically present at the facility, try to involve them in the development/review of the ISP through other means, such as the phone, email, fax, etc. There may be instances where a resident has no family or legal representative, or for whatever reason, the family or legal representative does not wish to be involved with the development/review of the plan, and if such is the case, this is acceptable. In such cases, the facility should document all efforts made to involve the family or legal representative at each development/review stage. (0036 – 5/07)

Question: *When and where will there be available DSS approved training for ISPs?*
Answer: There are two curriculums currently approved by the department for the ISP training. One is offered by the Virginia Geriatric Education Center (VGEC). The website address for VGEC is www.sahp.vcu.edu/gerontology/html/dss/home.html and the phone number is 804-828-9060. The training is also available from the Adult Care Education Center. The website address of the Adult Care Education Center is www.aceconline.com and the phone number is 888-333-4913. Please check the website addresses or call the centers for information on the schedules and locations of training. (0043 – 5/07)

Question: *What is defined as the immediate needs of a resident in relationship to his or her individualized service plan (ISP)?*
Answer: Since the comprehensive ISP does not have to be completed until 30 days after admission (although, of course, it may be completed earlier), the "immediate needs" must be addressed in the plan within 72 hours of admission to ensure that the health, safety, and welfare of the resident are not endangered during the time when there is not a comprehensive plan. The immediate needs would be those identified needs (see 440 B 1) that would present a risk of harm to the resident if not addressed right away. What the specific immediate needs are would vary from resident to resident, depending upon conditions, circumstances, capabilities, etc. that apply to an individual. (0003 and 0100 – 5/07)

22 VAC 40-72-440 E – Individualized service plans
Question: *Is it necessary for a health care oversight person to sign ISPs?*
Answer: Standard 440 E requires the ISP to be signed and dated by the person who has developed the plan, by the resident or legal representative, and by any others who contributed to the development of the plan. This requirement also applies to reviews and updates of the plan. The reviews and updates are those referred to in Standard 440 I, that is, the formal reviews that occur at least once every 12 months and as needed as the condition of the resident changes. It is not necessary for the licensed health care professional providing health care oversight, as required by Standard 480, to sign the ISP, unless the health care professional directly participates in the development, formal review, or update of the plan. If the health care professional only recommends (to the appropriate facility staff) changes to a resident's ISP when it does not appropriately address current health care needs, as required by 480 B 1, but is not involved any further, then the health care professional would not be required to sign the ISP. (0057 – 5/07)

22 VAC 40-72-450 G – Personal care services and general supervision and care
Question: *Can a resident refuse to allow the facility to notify his next of kin?*
Answer: Standard 450 G requires that at least one of the listed entities, that is, next of kin, legal representative, designated contact person, or responsible social agency, be notified of an incident of a resident falling or wandering. Being that only one has to be so notified, the resident can refuse to have the next of kin notified, and instead select one of the others to be notified of an incident of falling or wandering. This information should be placed in the resident's record. Included in the personal and social information on a resident, as found in Standard 380, is information regarding a designated contact person or persons authorized by the resident (or legal representative, if appropriate) for notification purposes. (0031 – 5/07)

22 VAC 40-72-460 D 1 – Health care services

Question: *If unlicensed staff are providing gastric tube care, does the RN responsible for training and oversight have to be on staff? On-site during care?*

Answer: The delegating registered nurse must be employed by, or under contract with, the assisted living facility. Whether or not the delegating registered nurse has to be on-site during care provided by the unlicensed staff is dependent upon the nurse's assessment of both the resident's care needs and the unlicensed staff members' competencies as documented by the nurse in the staff members' files. (0021 – 5/07)

22 VAC 40-72-500 – Mental health services coordination, support, and agreement

Question: *In the past the CSB refused involvement with the "stated intent to harm self" as well as the Sheriff's Dept. Both said the act had to actually occur, is this still the case? We wanted to act before resident did harm to herself.*

Answer: Actual harm or injury does not need to occur before a request can be made to the local law-enforcement agency or to the local CSB (or behavioral health authority) to assist with a person experiencing a psychiatric emergency. The following section of the Code of Virginia cites the specific conditions that authorize the law-enforcement agency and the CSB or behavioral health authority to intervene during a psychiatric emergency:

§ 37.2-808 - Emergency custody; issuance and execution of order. (see also § 37.2-809 - Involuntary temporary detention; issuance and execution of order.)

A.. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment. This evaluation or treatment shall be conducted immediately in accordance with state and federal law. (0190 – 5/07)

Question: *What if you have requested a different mental health professional for a resident because your documentation shows that the resident's mental illness is not improving but you are refused a different doctor?*

Answer: This situation may reflect a conflict with the rights of a resident to have the freedom of choice, as determined by the resident or by the individual having the appropriate authority to act in behalf of the resident. If the matter cannot be resolved in the best interest of the resident, it would then be appropriate to involve the local Ombudsman and/or the Virginia Office for Protection and Advocacy. (0081 – 5/07)

Question: *If a private-pay resident needs in-patient mental health care, can the resident's doctor have him admitted?*
Answer: Yes, provided that the resident is willing to accept a voluntary admission. If, however, the resident is either unwilling or unable to accept a voluntary admission, then pursuant to §37.2-808-§37.2-816 of the Code of Virginia, the facility would need to contact its local community services board or behavioral health authority in order to have the resident evaluated and, if necessary, transported under a temporary detention order to be involuntarily admitted to a psychiatric facility or unit. (0042 – 5/07)

22 VAC 40-72-500 C – Mental health services coordination, support, and agreement
Question: *Standard 500 C specifies that an ALF enter into a written agreement with all providers of mental health services utilized by residents. What if a resident, as is their right, obtains services from a mental health provider that has not signed an agreement with the facility, or one the facility does not have an agreement with? For example, the residents seeks out the services they want, but does not necessarily tell the facility, and then the facility finds out, are they required to obtain a written agreement?*
Answer: The facility must make the effort to obtain a written agreement with each public or private mental health services provider utilized by residents in the facility, therefore, when the facility becomes aware that a resident is receiving mental health services from a provider, the facility must make an effort to secure an agreement. As stated in 500 C 4, if the facility is unable to secure an agreement, it must document the reason for the failure and all efforts made to secure the agreement. (0128 – 5/07)

22 VAC 40-72-500 C and D – Mental health services coordination, support, and agreement
Question: *If an MR resident does not need mental health services, does he need a mental health agreement in his case record?*
Answer: A mental health services agreement is required when a resident is actively receiving mental health services, which will include residents receiving only case management services. The agreement must be maintained on file at the ALF, but is not required to be in the resident's record. (0158 – 5/07)

22 VAC 40-72-500 E – Mental health services coordination, support, and agreement
Question: *If a facility contacts a CSB to have a resident evaluated for emergency psychiatric services and the CSB does not come out to evaluate the resident, will the facility be cited for not meeting that particular need of the resident even though it is the responsibility of the CSB to address that particular need?*
Answer: If a CSB (or behavioral health authority) fails to respond to a facility's request to evaluate a resident whom the facility thinks is in need of emergency psychiatric services, and the event is clearly documented in the resident's record, then the facility will not be cited. However, if the facility has determined that there is a threat of imminent harm to the resident of concern and/or others and the CSB (or behavioral health authority) does not respond, the facility is to call the local police to secure an emergency custody order, pursuant to §37.2-808 of the Code of Virginia. (0037 – 5/07)

22 VAC 40-72-500 and 360 – Mental health services coordination, support, and agreement

Question: *If an ALF is associated with a hospital that has mental health professionals, e.g., M.D., case managers, CSW, etc.), can they be used to provide mental health services to residents in the ALF?*
Answer: The question does not specify the way in which the "ALF is associated with a hospital" or the specific mental health services needed by the ALF, and the answers would depend on those factors.
If the ALF has no financial ties to the hospital:

- The ALF may make a referral to a mental health professional employed by the hospital to complete the initial mental health screening as required by 360 C., and, to provide other mental health services, except for evaluations for involuntary commitments, which are restricted by law to community services boards and behavioral health authorities.

If the ALF has a financial relationship with the hospital, the ALF:

- May use a hospital employee to perform only the initial screening, which is conducted to determine whether a referral needs to be made for a formal mental health screening by a qualified mental health professional. That is, only a provider with no financial relationship with the ALF can perform the formal mental health screening.
- May use the hospital's mental health professionals to provide emergency and non-*emergency* mental health care and treatment, unless
    - an evaluation is for purposes of obtaining an involuntary psychiatric admission, in which case the CSB or behavioral health authority must perform the evaluation, or,
    - another regulation or law applicable to licensed ALFs requires that the evaluator be independent of the facility in which the resident resides, e.g., an evaluator who conducts an assessment to admit a resident to a safe, secure environment (or special care unit) must be independent of the ALF. (0142 – 5/07)

22 VAC 40-72-520 C – Activity/recreational requirements
Question: *Does the activity person need to be trained in "physical, cognitive, productive, sensory, reflective, outdoor, and nature" and will the STATE offer such trainings for the activity director/staff?*
Answer: There is no requirement for the activity director or staff to have training in these specific topic areas. However, 22 VAC 40-72-520 D requires that activities shall be planned under the supervision of the administrator or other qualified staff person. Also, 22 VAC 40-72-520 L requires that the staff person or volunteer leading an activity have a general understanding of: 1. attention spans and functional levels of the residents; 2. methods to adapt the activity to meet the needs and abilities of the residents; 3. various methods of engaging and motivating individuals to participate; and 4. the importance of providing appropriate instruction, education and guidance throughout the activity. DSS develops and offers activities-based training in cooperation with both the Virginia Geriatric Education Center and the Alzheimer's Association. (0187 – 5/07)

22 VAC 40-72-520 D – Activity/recreational requirements
Question: *Define "qualified staff person".*
Answer: The term "qualified" is defined in 22 VAC 40-72-10 as "having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or

experience." In addition, the staff person is required to meet any statutory or regulatory requirements that may apply (e.g., licensed health care professional, registered medication aide, etc.) (0148 – 5/07)

22 VAC 40-72-580 – Food service and nutrition
Question: *Can a family member who wants to feed a resident in his room be allowed to do so?*
Answer: If a family member routinely or regularly feeds a resident in his room, the facility would have to comply with the requirements of 580 B 1 a or b. If a family member occasionally feeds a resident in his room, the facility would have to comply with 580 B 2. The fact that a family member is assisting at mealtime does not eliminate the responsibility of the facility staff for monitoring intake as required by 580 F. (0072 – 5/07)

22 VAC 40-72-580 B 1 and F – Food service and nutrition
Question: *If we are to give residents a choice of eating privately in their rooms (with a plan) how can we monitor their food consumption, etc. if we have 200 residents who might opt for dining in their room?*
Answer: 580 B 1 does not require the facility to offer residents this option unless routine or regular room service is part of the facility's policy and procedure. If the facility chooses to offer this option and "200 residents" choose to exercise the option, the facility is responsible for developing and implementing a monitoring plan consistent with the requirements outlined in 580 F. (0028 – 5/07)

22 VAC 40-72-580 F – Food service and nutrition
Question: *Can you clarify monitoring meal consumption? Does this mean meal attendance or % of meal eaten?*
Answer: The standard requires the facility to develop and implement a policy to monitor each resident's food consumption. Estimating what percentage of the food served was actually consumed is one method that can be used because it allows staff to be aware of significant changes that may indicate developing physical or mental problems. (0073 – 5/07)

Question: *Does the facility have to document the percentages of food consumed by the residents?*
Answer: It is not necessary for the facility to document what percentage of the food that is served is consumed as long as the facility has a policy that establishes another method for monitoring consumption that is understood and implemented by facility staff. Inspectors will review policy and may question staff and residents to determine what and how successfully methods are being used. (0091 – 5/07)

22 VAC 40-72-620 B – Menus for meals and snacks
Question: *Regarding posted menus (in a secured unit) is it necessary to have a weekly/monthly menu posted? Some residents become confused with a weekly/monthly menu. What if a facility posts a daily menu with each meal on an individual 8½ x 11 sheet of paper with the meal (breakfast, lunch, and dinner) on it as well as the time it will be served and what will be served. Is this individualizing/tailoring causing the facility to be out of compliance with the standards?*
Answer: The standard requires that the menus be dated and posted for the current week. It does not require a particular format as long as the meal plans for the week are readily accessible to

those residents and families/friends who prefer to know what is scheduled ahead of time. It would be acceptable to post an optional daily menu in addition to the required weekly menu if a facility chooses to do so. (0140 – 5/07)

22 VAC 40-72-620 F – Menus for meals and snacks
Question: *Can an ALF determine that they are not going to offer special diets? (information would need to be shared in disclosure to prospective residents).*
Answer: While there is nothing in the standards to prevent a facility from doing this, it poses a problem if a resident's physician determines that the resident needs a special diet (no added sugar, low sodium, low fat, mechanically altered, etc.) The facility would have to make special arrangements to meet the identified need until such time as discharge arrangements can be made for the resident. (0119 – 5/07)

Question: *Why would "no added salt" and "no concentrated sweets" diets be considered special diets?*
Answer: These diets are ordered for the treatment of conditions such as diabetes and hypertension. They require planning beyond withholding sugar and desserts or table salt. Certain prepared foods, such as canned soups and sweetened cereals, some vegetables which are high in natural salts and sugars, and many processed meats must be used in moderation or not at all. The residents require evaluation of the meal plan and its effectiveness in meeting their individual needs. (0180 – 5/07)

22 VAC 40-72-620 F and G – Menus for meals and snacks
Question: *What is considered a "special diet"? Anything other than regular? Please include examples.*
Answer: "Special diets, medical nutrition therapy, diet therapy, therapeutic diets" are defined for our purposes as any diet ordered by a physician as part of treatment for a disease or clinical condition (e.g., no concentrated sweets for a diabetic), or to eliminate or decrease specific nutrients in the diet (e.g., sodium), or to increase specific nutrients in the diet (e.g., potassium), or to provide food the resident is able to eat (e.g., a mechanically altered diet). A mechanically altered diet is one in which the texture of a diet is altered. When the texture must be modified when prepared, the type of texture modification must be specified in the physicians' order. [This does not include cutting meats, vegetables or fruit for residents who simply need some assistance after the meal is served.] The more common practice amongst physicians and dietitians in long term care is to liberalize the diet (e.g., a physician order for Regular Diet) to increase acceptance of the meal. A well balanced regular diet such as that which is promoted through MyPyramid.gov can be considered appropriate/sufficient for most individuals as long as weight gain or loss and general physical condition are monitored. If an individual's diagnosis or clinical condition is determined to require stricter management of dietary intake, the physician and dietitian will determine which special diet is appropriate. (0134 – 5/07)

22 VAC 40-72-640 D 1 b – Physician's or other prescriber's order
Question: *Can medication aides accept oral orders from an MD? I did not think they were allowed to do that.*
Answer: Medication aides can accept oral (verbal, telephone) orders from physicians or other prescribers **to administer** the prescribed medication. [The documentation of the oral order must

be reviewed and signed by the physician or other prescriber within 10 working days as required in 640 D 2.] Medication aides are required to advise the prescriber that they are not nurses and therefore cannot transmit the order to the pharmacy. The prescriber or his/her designee must contact the pharmacy with the prescription order to be filled. (0076 – 5/07)

22 VAC 40-72-670 H – Administration of medications and related provisions
Question: *How long is a facility required to keep a resident's medication administration record (MAR)?*
Answer: The MAR is a permanent part of each resident's record and as such must be maintained for at least two years after the resident leaves the facility as required in 560 J. Typically, the standard of practice is to maintain the MAR forms for the most recent 3-6 months in the resident's current file. Older forms may be kept properly labeled and stored with archived files but must be available upon request if needed for inspection or other investigative purposes. (0090 – 5/07)

22 VAC 40-72-730– Resident rooms
Question: *When residents furnish their own rooms must the facility dictate to residents that each of these items be bought, even when they would not have chosen to do so?*
Answer: Standard 730 A provides that the resident is to be encouraged to furnish or decorate his room as space and safety considerations allow and in accordance with the regulations. Standard 730 B specifies the items to be contained in each bedroom. Whether a bedroom is furnished by the facility or by the resident, the items specified in the standard must be included. If the resident does not wish to buy a particular item himself, then the facility must furnish it. (0056 – 5/07)

22 VAC 40-72-760 E and 840 G – Laundry and linens
Question: *If residents have access to a laundry room (they are capable of doing their own laundry), does the water temperature for laundry still remain at 140 degrees? The tap is set between 105 -120 degrees. The facility uses the same washer and dryer to wash linens that residents use to wash personal clothes.*
Answer: Standard 760 E requires that bed, bath, table and kitchen linens be washed in water temperature above 140ºF or the dryer must heat the linens above 140ºF or a sanitizing agent must be used. This standard does not apply to the personal clothes of residents, which may be washed and dried at a lower temperature, with no sanitizing agent required. Standard 840 G requires a range of 105º to 120º for hot water at taps available to residents. This standard applies to sinks and showers, not the washing machine. (0039 – 5/07)

22 VAC 40-72-810 D – Resident councils
Question: Regarding Resident Council in a dementia unit, what would be the TA for 22 VAC 40-72-810 D, "without the presence of any facility staff" if they are unable to do due to cognitive impairment?
Answer: If arrangements cannot be made to meet the requirement to allow at least part of each meeting to be conducted without the presence of a staff person, the facility should consider requesting an allowable variance. (0045 – 5/07)

22 VAC 40-72-810 F – Resident councils

Question: *Annual reminder of Council – Does facility need to document that annual reminders were given to residents?*
Answer: Standard 810 requires annual reminders be given to residents regarding a resident council, if there is no council. The standard does not require documentation of these annual reminders. Although not required, it would be advisable for a facility to keep a record of residents who received annual reminders, so there is no question of who received the reminders and so there is no doubt as to when the next reminders must be given. (097 – 5/07)

22 VAC 40-72-820 3 – Pets living in the assisted living facility
Question: *Does this include birds, fish, hamsters, guinea pigs…?*
Answer: Facilities will need to consult with their local animal control office or a local veterinarian to determine what immunizations are required for each type of pet that is being considered for residency within the facility and then ensure that the appropriate immunizations have been administered and that the pet is free of diseases transmittable to humans. (0075 – 5/07)

22 VAC 40-72-820 4 a – Pets living in the assisted living facility
Question: *What is expected in the regular examination of pets?*
Answer: Facilities will need to consult with their local animal control office or a local veterinarian to determine the examination requirements for each type of pet that is being considered for residency within the facility. (0156 – 5/07)

22 VAC 40-72-840 G and 760 E – General requirements
Question: *If residents have access to a laundry room (they are capable of doing their own laundry), does water temperature for laundry still remain at 140 degrees? The tap is set between 105 -120 degrees. The facility uses the same washer and dryer to wash linens that residents use to wash personal clothes.*
Answer: Standard 760 E requires that bed, bath, table and kitchen linens be washed in water temperature above 140ºF or the dryer must heat the linens above 140ºF or a sanitizing agent must be used. This standard does not apply to the personal clothes of residents, which may be washed and dried at a lower temperature, with no sanitizing agent required. Standard 840 G requires a range of 105º to 120º for hot water at taps available to residents. This standard applies to sinks and showers, not the washing machine. (0039 – 5/07)

22 VAC 40-72-860 D 6 and 7 – Heating, ventilation, and cooling
Question: *This applies to a resident's private bedroom. What if the resident chooses to have their room temperature exceed 80ºF?*
Answer: Once the standard is in effect for a facility, if a resident wishes to have his or her bedroom temperature exceed 80ºF, the facility should request an allowable variance for the temperature in that resident's room. (0001 – 5/07)

22 VAC 40-72-890 A 1 c and d – Toilet, face/hand washing and bathing facilities
Question: *Is this reasonable when central bathing/shower areas are used for resident/staff safety, when showers are given throughout the day – as care planned and scheduled? As written, 6 showers or tubs would be needed for 40 people. Then to designate one of those areas for "men" when it is possible that 2-3 men reside in that area? This should be "outcome*

driven." Are the residents clean and well groomed? If not, the number of showers is most likely not the issue, rather staffing, resident performance, etc.
Answer: Standard 890 A 1 c, which requires one bathtub/shower for each seven persons or portion thereof, applies for buildings approved for construction or change in use and occupancy classification on or after 12/28/06. Otherwise, one bathtub or shower is required for each 10 persons or portion thereof. The lower ratio allows for greater flexibility and increased opportunity for resident choice in scheduling baths or showers. The lower ratio supports the principles of individuality, personal dignity and freedom of choice. Standard 890 A 1 d provides for separate rooms for bathtubs/showers (as well as toilets and sinks) for men and women where more than four persons live on a floor. This applies for buildings approved for construction or change in use and occupancy classification on or after 12/28/06. Otherwise, separate rooms for bathtubs/showers (as well as toilets and sinks) are required where more than seven persons live on a floor. Separate rooms for bathtubs/showers allow for gender privacy, which provides a level of comfort and avoidance of confusion, embarrassment and possibly inappropriate behavior. If circumstances warrant, an allowable variance may be requested. (0038 – 5/07)

22 VAC 40-72-900 – Toilet and face/hand washing sink supplies
Question: *On a secured dementia unit, what kind of soap is recommended to address the risk of ingestion? Chemicals, etc., are supposed to be secured.*
Answer: There are a number of non-toxic soap products that, if ingested, would not pose harm to the person. The gentle forms of commercial soaps used in typical wall-mounted dispensers meet the requirements of this standard as well as the intent of 1050 B. The intent of 1050 B is to avoid bar soaps that an impaired resident may pick up and eat and bottles of liquid soap that the resident may open and drink. (0019 – 5/07)

22 VAC 40-72-910 - Provisions for signaling/call systems
Question: *Can ALFs with 20 or more beds use hourly rounds in place of a signaling device that terminates at a central location?*
Answer: ALFs with 20 or more beds under one roof cannot use hourly rounds in place of a signaling device that terminates at a central location. (0040 – 5/07)

Question: *For facilities having 19 or fewer residents, if the residents' ISPs indicate that an awake staff is not needed, do rounds still have to be made?*
Answer: If the residents' ISPs indicate that an awake staff is not needed, Standard 910 would still apply. As required by subsection C of the standard, rounds have to be made at least once each hour during the specified time period to monitor for emergencies or other unanticipated resident needs, unless the signaling system meets the specifications of subsection B of the standard. If awake staff is not needed, depending upon the length of time it takes to make rounds, the staff person may be able to sleep between the rounds.
To meet the provisions of subsection B, the signaling device must terminate at a central location that is continuously staffed and permits staff to determine the origin of the signal or the signaling device must be audible and visible in a manner that permits staff to determine the origin of the signal. If awake staff is not needed at night in a facility having 19 or fewer residents, the staff person could be asleep as long as the provisions of subsection B are met and the staff person would be immediately awakened by the signaling device. (0112 – 5/07)

22 VAC 40-72-940 B – Fire and emergency evacuation plan
Question: *Please define "areas of refuge" and "assembly areas".*
Answer: "Areas of refuge" is defined in the Virginia Statewide Fire Prevention Code as: "an area where persons unable to use stairways can remain temporarily to await instructions or assistance during emergency evacuation." This definition is found in Chapter 10: Means of Egress, page 97. "Assembly areas" is not formally defined in the Virginia Statewide Fire Prevention Code, although it is referenced several times as a safe area to be designated for people to gather during an evacuation process that keeps them safe from the emergency and allows for accountability of those being evacuated. (0184 – 5/07)

22 VAC 40-72-950 – Fire and emergency evacuation drills
Question: *Please clarify the use of the word "evacuation" which is found throughout the standard. Please also clarify the requirement that fire and emergency evacuation drills be conducted three times per quarter, one on each shift.*
Answer: The Division of Licensing Programs consulted with the State Fire Marshal and determined that it was appropriate to use the language referenced in the Virginia Statewide Fire Prevention Code and rename standard 950 "Fire and emergency evacuation drills." The change in terminology refers directly to the language used in the Virginia Statewide Fire Prevention Code. Facilities will need to work with their local fire official to determine if they are required to evacuate residents during drills as determined by the use and occupancy classification requirements of the Virginia Statewide Fire Prevention Code. Per the Virginia Statewide Fire Prevention Code, fire and emergency evacuation drills are required to take place quarterly on each shift. If a facility operates on a schedule that includes three shifts, each shift would have to complete one drill during the quarter, thereby equaling three drills per quarter. The drills cannot take place within the same month. (0065 – 5/07)

Question: *In a fire-drill must we evacuate all residents? Remember this is a drill. Potential for injury is a major factor.*
Answer: The Division of Licensing Programs consulted with the State Fire Marshal and determined that it was appropriate to use the language referenced in the Virginia Statewide Fire Prevention Code and rename standard 950 "Fire and emergency evacuation drills." The change in terminology refers directly to the language used in the Virginia Statewide Fire Prevention Code. Facilities will need to work with their local fire official to determine if they are required to evacuate residents during drills as determined by the use and occupancy classification requirements of the Virginia Statewide Fire Prevention Code. (0082 – 5/07)

Question: *Regarding fire and emergency evacuation drills-must the residents be evacuated to the outdoors or is evacuation to another section of the building (behind a fire wall) acceptable?*
Answer: Facilities must work with their local fire officials to determine if they are required to evacuate residents during drills as determined by the use and occupancy classification requirements of the Virginia Statewide Fire Prevention Code. (0188 – 5/07)

22 VAC 40-72-960 D and G – Emergency equipment and supplies
Clarification for generator requirements:

The following technical assistance is provided for the current standards related to generators. Until the standards are changed through the promulgation process as stated in the Administrative Process Act of the *Code of Virginia,* an assisted living provider must request an allowable variance when it believes that an existing standard or requirement poses a financial or programmatic hardship. Information regarding the submission of an allowable variance is outlined at the end of this technical assistance section.

Section 63.2-1732.D, of the *Code of Virginia*, states "Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code." **NOTE: The Department of Social Services cannot grant an allowable variance for that which is specifically required by statute (Code) or by another regulatory agency.**

This Code section requires all ALFs with six or more residents to have the connections necessary to hook up to an alternative electrical power source. An emergency requiring generator use is being defined as an event where the normal electrical power source is interrupted for 12 or more hours. However, as soon as there is a loss of any utility, the facility is still responsible for immediately implementing its emergency preparedness plan. **When one or more of these requirements pose a hardship, an ALF may submit an allowable variance request.**

- ALFs may have a generator on site or a written agreement to provide a generator. Allowable variances must be requested by an ALF that chooses to evacuate to an alternative location or obtain a generator through some other means in the event the normal electrical power source is interrupted for 12 or more hours.

- ALFs must activate an alternative power source or complete an evacuation within 13 hours of interruption of the normal electrical supply.

- ALFs must document in the written communication method required by 22 VAC 40-72-330, the time the electricity went out and the time a generator was activated or an evacuation plan was implemented.

22 VAC 40-72-960 D 1 mandates that emergency electrical power be sufficient to provide, among other services, heating and cooling. **When one or more of these requirements pose a hardship, an ALF may submit an allowable variance request.**

- Heating may be provided by the ALF's regular heating system, by space heaters or by a combination of the regular heating system and space heaters. Use of space heaters must be approved by the appropriate state or local building or fire authority. The temperatures must be maintained as required by the standards. Alternative heating equipment must be available to the licensing inspector.

- Cooling may be provided by air conditioning or other cooling devices, such as fans. For those ALFs meeting the condition of 22 VAC 40-72-860 D 5, air conditioning is not

required unless the largest common area will be utilized during an emergency. For those ALFs meeting 22 VAC 40-72-860 D 6, air conditioning must be provided. The temperatures in air conditioned area must be maintained as required by the standards. Alternative cooling equipment must be available to the licensing inspector.

- Lighting must be adequate to prevent falls and accidents. Alternative lighting, provided by battery operated devices, may be used to supplement electrical lighting. Alternative lighting must be available to the inspector.

- Heating, cooling and lighting must be provided for an area no less than 40 square feet per resident. If the emergency preparedness plan indicates that the residents will remain in their rooms during the majority of the emergency, then the 40 square feet would automatically be met, based on 22 VAC 40-72-880 2. If the residents will utilize another area for the majority of the emergency, then 40 square feet per resident must be available in that location. However, only the location or portion of the location to be used for the majority of the duration of the emergency must offer 40 square feet per resident.

22 VAC 40-72-960 G specifies that an ALF shall ensure, among other things, the availability of a 96-hour supply of emergency generator fuel. **When one or more of these requirements pose a hardship, an ALF may submit an allowable variance request.**

- An ALF may store all or some of the fuel on-site, have plans to obtain fuel from a specific source, or have a written agreement with a company or other entity that will provide the fuel within the required activation time. It is not recommended that filled portable storage containers be stored on-site in large quantity.

- An ALF must contact the appropriate state or local building or fire official to determine the proper on-site storage of emergency generator fuel.

22 VAC 40-72-930 A requires that the facility develop a written emergency preparedness and response plan. This plan must include emergency management policies and procedures that address action(s) to be taken when there is a loss of utilities.

- The plan must include procedures that identify when a generator is to be used and directions for operating the generator to ensure that needed services will be provided. The procedures must include, but not be limited to, identification of whether residents are to remain in their rooms or relocate to a central or other location(s) in the facility.

- If an ALF chooses to evacuate to an alternative location in the event of a power outage lasting more than 12 hours, the plan must include the procedures for an orderly evacuation and a description of arrangements made with the expected location(s) where the residents will stay for the duration of the power outage.

ALLOWABLE VARIANCE INFORMATION

A licensee may request an allowable variance (AV) to a standard if it believes that the standard poses a substantial financial or programmatic hardship and that either an alternative method of compliance or suspension of all or part of a standard would not endanger the safety or well-being of residents. The Department of Social Services cannot grant an AV for that which is specifically required by statute (Code) or by another regulatory agency.

- No AV can be granted for the requirements of § 63.2-1732.D of the *Code of Virginia*.

- The process for requesting an AV is found in *General Procedures and Information for Licensure*. However, an allowable variance request template specific to emergency generator standards has been provided for ease of making requests. (0557 – 5/07)

22 VAC 40-72-970 B – Plan for resident emergencies and practice exercise
Question: *Does "all staff on each shift" mean those working at the time of the "emergency" exercise or every single employee of the facility? Is there a requirement of 100% participation in the actual exercise twice a year?*
Answer: "All staff on each shift" would apply to every employee (100%) in the facility participating in an exercise in which the procedures for resident emergencies are practiced at least once every six months. This will allow for all staff, regardless of what shift or day they may be working, to be knowledgeable in these procedures. (0083 – 5/07)

Question: *Does the exercise to be completed every 6 months mean that a practice is required for each of the different emergencies i.e. missing persons, medical etc.?*
Answer: Yes, the exercise must address the procedures for handling each of the identified emergencies and notifications. (0080 – 5/07)